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COMMISSION ON HUMAN RIGHTS

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SUMMARY RECORD OF THE 49th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 2 March 1994, at 10 a.m.

Chairman: Mr. van WULFFTEN PALTHE (Netherlands)

later: Mr. ENDO (Japan)

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GE.94-12005 (E)

The meeting was called to order at 10.20 a.m.

STATEMENT BY THE PRESIDENT OF THE REPUBLIC OF HAITI

1. The CHAIRMAN invited the President of the Republic of Haiti to address the Commission.

2. Mr. ARISTIDE (Haiti) said that, on the eve of the third millennium, weapons had become deadlier than ever and such deadly weapons were being used to impose a fierce, barbaric and bloodthirsty dictatorship on his country. Since the coup d'état of 30 September 1991, 5,000 citizens of Haiti had been murdered and the Charter of the United Nations, the Universal Declaration of Human Rights and the Haitian Constitution were violated daily. That had been confirmed by the reports of the joint United Nations Organization of American States (OAS) International Civilian Mission, the Special Rapporteur on the Situation of Human Rights in Haiti, Amnesty International, Americas Watch, Haiti Résistance et Démocratie and a number of non-governmental human rights organizations working in Haiti.

3. All those sources, reported that violence perpetrated against the civilian population by the military and their civilian allies had increased sharply throughout 1993 and early 1994. Attacks on the right to life and physical integrity were essentially aimed at denying freedom of opinion and expression, freedom of assembly and freedom of peaceful association. After 29 hellish months, cruelty was at its peak. The leaders of the coup d'état were forcing the 67 per cent of the population which had elected him to the nation's highest office to accept neo-colonialism or death.

4. In September 1993, the armed forces and their civilian agents had murdered Edouardo Dil, Martial Aurélus, Inès Dormé and Captain Fritz Pierre-Louis with complete impunity. On 27 December 1993, armed civilians had killed approximately 30 persons living in Cité Soleil and had left thousands more homeless when they had set the complex on fire. Those same armed civilians had been involved in the cowardly murder of Antoine Izméry on 11 September 1993 who, according to the Special Rapporteur, had been dragged from Sacred Heart Church in Port-au-Prince where he had been attending a memorial mass to commemorate the 11 September 1988 massacre at Saint John Bosco Church (para. 57). According to the International Civilian Mission, it had been a carefully planned and orchestrated commando-style operation, involving the Haitian Armed Forces (FADH) and their agents, who had carried out the execution with complete impunity. The Minister of Justice, Guy Malary, had been assassinated on 14 October 1993. On 2 February 1994, at least 12 young people had been killed in Sarthes, a suburb of Port-au-Prince, when the house where they had sought refuge from the attachés was tear-gassed.

5. Those were but a few examples. Anyone suspected of supporting the restoration of constitutional order was subject to arrest, detention, torture or abuse. Arrests were made without warrants, in violation of article 9 of the International Covenant on Civil and Political Rights and of article 17 of the American Convention on Human Rights. Acts of torture and attacks on physical integrity were committed in violation of article 5 of the Universal Declaration of Human Rights and article 25 of the Constitution of Haiti. The security - or rather, the insecurity - forces were a constant threat to

newspaper vendors; radio stations pillaged during the coup d'état were still closed; journalists had been forced underground; and the Parliament was held hostage by the leaders of the coup d'état.

6. In that connection, he recalled the resolution adopted by the OAS Permanent Council on 30 September 1991, demanding the punishment of those responsible for the loss of human life and the fact that the United Nations General Assembly had declared, by its resolution 3074 (XXVIII) of 3 December 1973, that political asylum could not be granted where there were strong grounds to suspect that the person concerned had committed a war crime or a crime against humanity.

7. Under article 147 of the Constitution, political amnesty had been granted to the leaders of the coup d'état in a spirit of reconciliation and justice that was not synonymous with impunity. The Centre for Human Rights and various non-governmental organizations (NGOs) had courageously denounced impunity and were working with the Haitian people to establish the rule of law. As the representative of one NGO had stated to the Commission, impunity was no accident of fate; it was man's doing and it could therefore be remedied by man.

8. In the first century after the arrival of Christopher Columbus, 90 million American Indians had perished. In Haiti, the genocide was still going on. He wondered why 300,000 internally displaced persons had had to go underground and were being persecuted, pursued and deprived of the basic human right to food and the right to earn a living. The right of those people to escape from repression should also be respected and yet political refugees were being turned away, unable to cross a kind of new Berlin wall raised in the ocean. Many boat people had died at sea. That was a violation of article 33 of the Convention relating to the status of refugees, which prohibited refoulement in any manner whatsoever to the frontiers of territories where a refugee might be persecuted. During 30 months, many Haitian refugees had been repatriated only to face persecution, beatings, arrest and torture.

9. The commanders of the army and of the police force must be dismissed immediately. The 7,000-man Haitian army absorbed more than 40 per cent of the national budget; the Haitian Armed Forces were, like the national as a whole, hostages of the coup leaders and their allies. In that regard, the international community could not remain neutral. In failing to assume its full responsibilities under the Governors Island Agreement of 3 July 1993, it was increasingly beginning to look like an accomplice to the crime. Procrastination and deceptive promises could not but undermine the credibility of those involved in the crisis.

10. Referring to the close correlation between democracy and the rule of law, he said that the Haitian judicial system was no longer functioning. In a barbaric corrupt system, the 38 judges and 17 officials of the Court of Cassation, the Court of Appeals and the Prosecutor's Office were under constant pressure from the coup leaders. As part of a reform of the system, a school must be opened as soon as constitutional rule was restored to train many new judges and court officials. A new police force must also be trained, as set forth in the Constitution of 1987 and the Governors Island Agreement.

11. He urged the friends of Haiti to expedite the establishment of a Commission on the Truth and to seek funds for the indemnification of coup d'état victims. It was hard to believe that the United Nations and the Organization of American States could not deliver the people of Haiti from a regime of terror. Aware that, by the year 2000, one half of the world's population would be under 25 years of age and that most of them would be poor, he and his supporters rejected political cynicism in favour of the rule of law. They would never give up their campaign to implement the elections of 16 December 1990.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS

(agenda item 12) (continued) (E/CN.4/1994/3-6, 7 and Corr.1 and Add.1-2, 8, 46-61, 97, 102-104, 110, 115, 119 and 122; E/CN.4/1994/NGO/7, 9, 12-15, 22-24, 26, 28, 29, 37, 40, 42-44; A/48/526 and Add.1, 561, 562, 578, 584, 600 and Add.1, and 601)

12. Mr. BIRO (Special Rapporteur), introducing his report on the situation of human rights in the Sudan (E/CN.4/1994/48), said that, when taking up his task, he had assured the Government of the Sudan that he intended to carry out his mandate in the most impartial and objective manner. As for the legal framework of his mandate, he wished to emphasize that, in studying and assessing the situation of human rights in the Sudan, he had applied only those standards of international human rights law to which Sudan had voluntarily consented or which applied as a matter of customary law.

13. A considerable amount of information had been collected during his two field missions to the Sudan. Additional information had been received during visits to Kenya and Egypt and through the Centre for Human Rights. An impressive volume of documentation had also been provided by the Government of the Sudan. He expressed his appreciation to that Government for its efforts, in particular those of the Minister of Justice and his staff, in organizing meetings and responding to most of the questions he had asked, though not all the communications were entirely satisfactory and the more recent ones contained nothing that would cause him to modify the conclusions and recommendations of his report.

14. It should be noted, that clearances required for flights to locations in the conflict zones had sometimes been denied by the Government or provided only after a delay. A most serious incident had been the arrest of several persons who had come to meet him during his first visit to the Sudan. They had finally been released but several of them had been threatened, exposed to degrading treatment and verbally abused during their interrogation by security officers.

15. The situation in the Sudan had deteriorated to such an extent that widespread violations of human rights by government forces as well as abuses by members of the factions of the Sudan Peoples' Liberation Army (SPLA) continued to take place. Potentially all categories of the population were

affected by human rights violations, in particular the rights to life and physical integrity. Violations attributed to Government forces included widespread arbitrary arrest, systematic torture and large numbers of extrajudicial killings and executions. For their part, the SPLA factions had killed numerous citizens.

16. In the northern part of the country, many suspected opponents of the Government were victims of violations at the hands of the armed forces. In the conflict zones, thousands of civilians, including women and children, had been killed and hundreds of thousands had been displaced. He stressed that women and children were the main victims of the conflict and were particularly affected by contemporary forms of slavery, forced labour, servitude and similar abuses resulting from a lack of tight control over armed agents.

17. Most of the violations reported in the Government-controlled areas had been consistently denied by the Sudanese authorities, and there was no indication that they were trying to improve the situation. On the contrary, increased, indiscriminate and deliberate bombing of civilians had been reported, designed, it would seem, to prevent people from settling in the areas affected and make them completely dependent on relief aid. Unfortunately, no truly meaningful dialogue had been established on those issues with government officials.

18. When examining Sudanese penal legislation he had applied only those standards of international human rights law to which the Sudan had acceded or which applied as a matter of customary law. In so far as the "sources" of that legislation were concerned, the first preambular paragraph of the 1991 Act stated that it had been passed "in accordance with the provisions of the Third Constitutional Decree of 1989". Other sources, included the "September Laws" of 1983 and a draft penal code discussed by the democratically elected Parliament in 1988, but never adopted. The provisions criticized in his report were also contained in those "sources". The "drafter" was the National Salvation Revolution Command Council which had dissolved itself in 1993.

19. The argument developed in the report concerning the "sources" and the "drafter" was thus strengthened, since the law continued to be in force. At the time of its adoption, the Revolution Command Council had been the highest legislative authority in the State. It was in that context alone that his considerations regarding the penal legislation had been made and should be understood. He rejected any interpretation which went beyond a purely legal discussion of the issue. The Sudanese Criminal Act of 1991 was a comprehensive and coherent system of positive legal norms that were to be observed and obeyed by citizens and applied by the courts. The Act did not mention expressis verbis any moral, metaphysical or religious source. Since it stood by itself as an autonomous system of norms, he had adopted a legal positivist approach in analysing its provisions.

20. He had referred in his report to several provisions in the Sudanese Criminal Act that were incompatible with the obligations of the Sudanese Government under international law. For example, the Act allowed children to be sentenced to death in certain cases, contrary to the requirements of article 6, paragraph 5, of the Covenant on Civil and Political Rights, to

which the Sudan was a party. Another example was the right to seek pardon or commutation of a death sentence, which was also enshrined in the Covenant but which was not granted in all circumstances by Sudanese penal legislation.

21. As for the corporal punishment provided for by the Sudanese Criminal Act, he drew attention to the view expressed by the Human Rights Committee, in its General Comment No. 20 of 7 April 1992, that the prohibition of torture under the Covenant extended to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. The Government of the Sudan, as a signatory of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, must refrain from actions that would defeat the purpose of the Convention.

22. In reply to the Government's assertion that his considerations concerning its penal legislation constituted an attack on Islam and the freedom of religion of the people of the Sudan, he drew attention to article 5, paragraph 1 of the Covenant on Civil and Political Rights, which stipulated that no parties might exercise a right - in the current case the right to freedom of religion - in a manner "aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant".

23. In response to his concern at the widespread practice of arbitrary arrest and detention and his considerations regarding due process of law, the Government of the Sudan had replied that detention in the Sudan took place in accordance with the internationally recognized legal principles incorporated in constitutional documents and the relevant legislation. However, he continued to receive reports of the arbitrary arrest and detention of persons suspected of being opponents of the Government. Moreover, the communication in question referred to the prohibition of physical or mental harm to a detainee, but he had in his possession many well-documented cases of torture and ill-treatment.

24. Following his recommendation that regional and international humanitarian and human rights organizations should be given free access to the country, the Government had responded that, while it welcomed their presence as visitors, it rejected "their presence as observers imposed upon it". As for human rights monitors, the Government had said that it "categorically rejects the presence of human rights observers in the Sudan, since that would constitute an unjustified escalation in total disregard of the Sudan's cooperation with the Special Rapporteur".

25. He had requested further information concerning the Higher Council for Human Rights. The Government had replied that the procedure for establishing the Higher Council had been initiated but that final approval had yet to be granted, mentioning its need for financial and technical assistance. He assured the Government that, once the Council was established, he would certainly make appropriate recommendations regarding its technical advice and financial assistance requirements. He had already drawn the attention of the Advisory Services Technical Assistance and Information Branch of the Centre for Human Rights to that request for technical assistance. On the subject of humanitarian aid, the Government had assured him of its cooperation with the United Nations and international non-governmental organizations.

26. Another communication stated that the Juvenile Welfare Act of 1983 was still in force. In addition, he had received the final report and recommendations of the seminar organized at Khartoum in December 1993 by the National Council for Child Welfare on the promotion and better understanding of the Convention on the Rights of the Child. Regrettably, however, that seminar had not addressed such problems as those of street children, children's camps, abduction cases and the sale of and traffic in children.

27. Mr. NDIAYE (Special Rapporteur), introducing his report on extrajudicial, summary or arbitrary executions (E/CN.4/1994/7/Corr.1 and Add.1-2), said that it gave an incomplete picture of the allegations of violations of the right to life in 73 countries during 1993. No continent and no political or economic system had been spared summary executions. Women, children, the elderly and the mentally handicapped persons had been among the victims and the practice had been aimed in particular at persons combating racial, ethnic or religious discrimination, defending economic, social, cultural, civil or political rights, aspiring to live on their ancestral lands or inextricably caught up in insurrections and wars.

28. In 1993 he had made 217 urgent calls to 52 Governments concerning more than 1,300 persons threatened with extrajudicial, summary or arbitrary executions. Since the finalization of his report, he had sent some 40 more urgent appeals. More than 2,300 cases of alleged persecutions had been communicated by letter to 51 Governments. The follow-up of cases transmitted during 1992 and 1993 had also been carried out with the Governments and sources concerned. In that year, as in the past, it would have been impossible for him to do anything without the information, suggestions and vital assistance of the non-governmental organizations (NGOs).

29. In 1993 also, he had continued his dialogue with Governments, many of which had been very cooperative. In that connection, he thanked 29 Governments (by name) which had sent him replies after the finalization of his report. An analysis of those replies would be included in his next report. Unfortunately, a number of Governments had chosen to remain silent. He had, in fact, received at long last communications from all the countries mentioned in the list of States which had never replied since the establishment of the mandate in 1982, but the quality of the replies had varied greatly.

30. He was particularly grateful to the Governments which had invited him to visit their country in order to carry out an on-the-spot examination, with the assistance of non-governmental organizations, families and ordinary citizens, of the means available to protect the right to life. Apart from Rwanda, and Peru, which he had visited in 1993, the Governments of Algeria, Argentina, Burundi, Colombia, Indonesia and Sri Lanka, had also invited him to visit them. Possible visits to Azerbaijan and India were also under consideration. He hoped that their example would encourage other Governments such as those of Bangladesh, China, India, Tajikistan and Turkey, countries which he wished to visit.

31. Since his previous report to the Commission at its forty-ninth session, he had visited Croatia, Rwanda and Peru. The reports on those visits were currently before the Commission (E/CN.4/1994/7 and Add.1 and 2). However, not

only had no comments been received from the authorities of Rwanda concerning his conclusions and recommendations (E/CN.4/1994/7/Add.1, paras. 59-86) but the situation in that country had worsened. The Arusha Peace Agreement had not been fully respected and recent events had resulted in the deaths of hundreds of persons. The problem of Rwanda could clearly not be isolated from its regional context, particularly its links with and impact on the crises in Burundi and Zaire, and any proposed solution to the problem must take account of events and developments in those two countries.

32. With regard to Peru, though he had welcomed the adopted of some reforms following his visit, particularly with regard to the legislation governing the trials of persons accused of terrorism, it was disturbing to note that certain shortcomings, to which attention had been drawn, had not been corrected but, on the contrary, had become institutionalized. In connection with the murder of a professor and nine students abducted from "La Cantuta" University in Lima, he once again stressed the importance of forensic experts in investigations into extrajudicial, summary or arbitrary executions and appealed to the international community to establish a team of such experts to assist Governments to fulfil their obligation to investigate every case.

33. There was a disturbing regression throughout the world in the matter of capital punishment, with an expansion of the field of application of the death penalty and a reduction in the guarantees of an impartial trial and effective appeals. Thus, in Algeria, China, Egypt, Pakistan and the United States of America, persons under 18 years of age had been sentenced to death and even executed. In addition, the same countries and eight others had adopted legislation restricting the guarantees of impartiality and the rights of the defence. The range of application of the death penalty had been extended by new legislation in Bangladesh, China, Egypt, Pakistan and Saudi Arabia.

34. Capital punishment was in itself a negation of the right to life. Applied in such circumstances, it became a summary or arbitrary execution or, at any rate, was contrary to the manifest wish of the international community that its application should be exceptional and that it should be abolished completely in the not too distant future. He urged the Commission to act against the alarming trend he had mentioned and to consider capital punishment as a priority question.

35. Another major concern was that impunity still persisted and had become commonplace, even when everyone knew who had perpetrated the crimes. In some cases, Governments simply refused to investigate the crimes; in others they imposed light penalties on a few scapegoats while the real culprits went free; in others still the judicial system was deliberately paralysed. Sometimes, impunity was guaranteed in advance by the law or amnesty laws, adopted on the pretext of national reconciliation, might be concealing atrocities. More distressing still was the fact that legislators, seemingly without pity for the victims, did not even provide for their indemnification.

36. Impunity was a threat to the rule of law and it bred violence. The Commission must therefore call on all States to honour their obligation to investigate all alleged violations of the right to life, prosecute the offenders, indemnify the victims and ensure that extrajudicial, summary or

arbitrary executions did not recur. The actions of armed groups which spread terror among populations were no excuse for States' failure to comply with their obligations.

37. He drew the Commission's attention to the scarcity of the material, technical and human resources with which he had to work. If the international community truly cared about the promotion of human rights, its contribution to that cause should be at least one tenth the amount of its expenditure on weapons. All he personally wanted was three assistants and a secretary so that he could carry out his duties in 1994. He also hoped that appropriate resources would be provided to the other special rapporteurs, with whom he had enjoyed closer relations since the World Conference on Human Rights.

38. Mr. Endo (Japan) took the Chair.

39. Mr. ARTUCIO (Special Rapporteur), introducing his report on the human rights situation in Equatorial Guinea (E/CN.4/1994/56), said that he had paid two visits to that country, in October 1993 and December 1993. The authorities there had been very cooperative on the whole, and he had held a very frank discussion with the Head of State and had been able to interview ministers, members of the diplomatic corps, representatives of international organizations and non-governmental organizations, church leaders, leaders of political parties and members of the general public.

40. He had observed certain positive changes in the human rights situation in Equatorial Guinea, including the acceptance of the multiparty system and legalization of 14 political parties; the release of political prisoners and the amnesty and pardon on 12 October 1993 of several political prisoners. At his request, the Ministry of Justice and Worship had also taken steps to improve prison conditions. Nevertheless, he felt that the Government should permit greater general participation in political, social and economic life and that it should take legislative and administrative steps to win the trust of the opposition parties, including those parties and groups which had refused to participate in the legislative elections of November 1993. Moreover, the police and the military must be instructed to stop regarding members of the political opposition as enemies.

41. There had been no change in the legal structure of Equatorial Guinea since the Commission's forty-ninth session. Power was concentrated in the hands of the President of the Republic to the detriment of the other branches of Government. The independence and impartiality of the judiciary were not guaranteed and the rights of the defence were not respected. There were gaps in the law, pre-independence Spanish laws were out of date and the laws were not published, new laws being read out over the radio or on television. It was thus very difficult for citizens, or indeed lawyers, to cite the law in detail, whether in court or in dealings with the administration.

42. Arbitrary arrests of members of the political opposition were still frequent, often accompanied by torture and abuse. There had been a number of deaths in custody, presumably as a result of ill-treatment. The authorities had not conducted any investigations into such deaths or punished those responsible.

43. The authorities often stretched the law in order to level charges against certain persons who, like those accused of political activities, were court-martialled in summary proceedings. The jurisdiction of the military courts must be limited to specifically military offences committed by military personnel. As things stood, sentences handed down by courts martial could not be appealed to the Supreme Court, even where a death sentence had been passed.

44. The treatment of prisoners and detainees was not in keeping with the treaties to which Equatorial Guinea was a party. Until his second visit in December 1993, prisoners' food had consisted of two pieces of bread a day. They lived on whatever their relatives or friends were able to contribute. However, as a result of his suggestions, that situation had improved. In fact, the prison population at any given time was very small, despite the frequent and repeated arrests of members of the opposition, who were arbitrarily detained for a few days at a time.

45. The laws on freedom of expression, assembly, protest and the press were very restrictive. The practice of religious freedom was not actually inhibited but it was not adequately protected by law, in the view of the spokesmen for the various denominations. After he had written his report, he had learned of the arrest and detention, on 22 December 1993, of Father Eusebio Longinos Mangue, a Catholic priest, for allegedly using catechism classes "as a means of communication for other subjects".

46. Entry into and exit from the country and even freedom of movement within the country were restricted for political reasons. State security services often withheld citizens' passports for months on end, solely on political grounds, and there was a kind of internal customs system whereby the police prevented citizens from travelling from the island of Bioko (on which Malabo, the capital, was located) to the continent and vice versa.

47. Women had an inferior legal and social status and were discriminated against in the educational, professional, social and political fields. A separated woman was imprisoned indefinitely if she was unable to reimburse to her ex-husband the amount of her marriage portion plus the additional cost of her maintenance. Ethnic discrimination was also covered in his report (paras. 73 to 75) but, in view of its seriousness and complexity, it warranted further study.

48. Major progress had been achieved following the signing of the National Pact on 18 March 1993. That progress was described in paragraph 80 of the report. It was his belief, however, that the authorities had not fulfilled a number of commitments assumed under the Pact. The electoral process had been conducted without regard for the observations and recommendations of the United Nations inter-agency mission. As a result of the detention, abuse and intimidation of the political opposition by government agents, eight major parties had withdrawn from the process and called for a boycott of the elections.

49. The Governments of the major donor countries and the intergovernmental institutions, including the United Nations, had decided not to send observers to the elections or to provide financial support being convinced that the

elections would not be truly pluralistic. Lastly, the authorities of Equatorial Guinea had not properly fulfilled their obligations to report to the various human rights treaty bodies.

50. He therefore strongly urged the Government of Equatorial Guinea to meet, without delay, a number of basic conditions set forth in the "Recommendations" section of his report (chap. IV, para. 103). Those conditions included the adoption of administrative and legislative measures in the field of human rights, in the field of legislation and in the political process. Based on consultations with the authorities, the representation of United Nations bodies and a number of foreign embassies in Equatorial Guinea, he had come to the conclusion that those basic conditions could be more easily fulfilled if technical assistance were provided by the Centre for Human Rights and the United Nations Development Programme. The chief beneficiaries of such assistance would be the people of Equatorial Guinea.

51. Paragraph 105, subparagraphs (a) to (f), outlined the type of technical assistance he believed was necessary, including the sending of legal experts and the holding of training courses for senior government officials, judges, prosecutors, military and police personnel, prison officers, the leaders of political parties, and representatives of NGOs, women's organizations and the social sector. The courses and seminars would be organized by the Centre for Human Rights. The implementation of such a programme would substantially improve the human rights situation in Equatorial Guinea but would require the goodwill and cooperation of the Government.

52. Mr. GROTH (Special Rapporteur) said that his report on the situation of human rights in Cuba (E/CN.4/1994/51) constituted an update of the one presented to the General Assembly at its forty-eighth session. Prepared essentially on the basis of information received from a variety and constantly growing number of sources, the report contained specific references only to those cases communicated to the Special Rapporteur which were considered to be most relevant and which had been confirmed by more than one source.

53. As in the past, and despite reiterated requests, the Government of Cuba had continued to refuse to cooperate with him in any way and had provided no information or comments on the various aspects of the cases he had dealt with. That made it impossible for the Special Rapporteur to intervene in the many individual cases, most of them urgent, in which the victims had solicited his assistance.

54. In assessing the situation of civil, political, economic, social and cultural rights in Cuba, he had taken into account a number of constitutional and penal code provisions, but that in no way implied criticism of the ideological principles contained in the Constitution, which was not part of his mandate. His comments related to the restrictions which the interpretation and implementation of those principles by the Cuban authorities placed on the basic rights of the population.

55. That being so, his criticism focused on the lack of opportunities for citizens at all levels to channel and defend their interests and opinions when the latter did not coincide with the Government's authorized line. Those most vulnerable were persons or groups that had emerged for the purpose of

defending human rights or trade-union rights or simply to engage in political activities. It was typical of those groups, about 100 in number, that they used strictly peaceful means to pursue their ends.

56. Owing to the excessive control of the State apparatus, each group was small in number and its possibilities for taking action very limited. He was convinced, however, that their concerns were neither isolated nor transitory, and that their growing numbers reflected the desire of a large part of society to seek avenues not officially approved for promoting its legitimate interests. As for the harassment of which the members of human rights defence groups had been the target, he recalled that Commission on Human Rights resolution 1993/64 had urged Governments to refrain from all acts of intimidation or reprisal against those who sought to cooperate or had cooperated with representatives of United Nations human rights bodies.

57. Perhaps the most visible form of social and political control had been the adoption of discriminatory measures, such as arbitrary dismissal from employment and subsequent ostracism; constant harassment and intimidation by the security organs, or at their instigation; the detention, trial and sentencing for such offences as enemy propaganda, illegal association, assembly and demonstrations, clandestine publishing, contempt, "anti-social behaviour" and the like; and imprisonment in abominable conditions for many years.

58. Those phenomena were commonplace and endemic and had not decreased over the past year. The release of all persons serving sentences for offences having political connotations, the review of trials in which the human rights of the accused had been openly violated and the improvement of conditions for prisoners, in particular for those who had been subjected to such reprisals as confinement in punishment cells for protesting against treatment received or refusing re-education, would appear to require priority attention.

59. Such a situation had not, to his knowledge, given rise to repeated and significant violations of the right to life for political reasons. The opposition in Cuba used words, not arms, to pursue its goals, sometimes even quoting the Universal Declaration of Human Rights; that made the intransigence of the authorities all the more intolerable. The systematic denial of the right to freedom of opinion and expression, peaceful freedom of association and assembly and the participation in the management of political affairs must give cause for concern in the international community. The Cuban authorities must do everything possible to begin a dialogue with all sectors of the Cuban people, both inside and outside the country, as a first step towards normalizing the political situation.

60. Although, in recent decades the majority of the population had made considerable progress in the area of economic, social and cultural rights, the serious economic crisis that Cuba was currently experiencing had led to a marked deterioration in the food and health situation and had also been a contributing factor to the increase in the number of persons seeking to leave the country illegally; that had given rise to frequent and regrettable instances of an excessive use of force by the security organs, in violation of

the right of all citizens freely to leave and return to their country. There had also been numerous accidents involving persons attempting to leave the island.

61. In those circumstances, the trend towards introducing reforms in the economy over the past year must be regarded as a positive step, and it was to be hoped that others would follow. It was his impression, however, that economic reforms were being hampered by ideological and political factors, and in particular by the deep suspicion of any steps to limit firm government control.

62. The embargo maintained by the United States also made reforms more difficult and costly and created political barriers to more far-reaching actions and more immediate results, at a time when the urgent restructuring of the economy and society was essential from both a humanitarian and a human rights perspective. However, the counter-productive and inefficient Cuban economy was the principal cause of the current problems, not the embargo as such.

63. To decide its destiny in a peaceful and civilized fashion, the Cuban people required the disinterested support of the international community. Above all, however, the Cuban Government must step up its timid liberalization measures so that the people could express itself freely, without fear, in the exercise of its sovereign rights, whether civil and political or economic, social and cultural. He was certain that the Cuban people would preserve the social advances that it had achieved.

64. Mr. PEREZ NOVOA (Cuba) said that the hostility shown towards Cuba by succeeding United States Governments over the past 35 years had known no bounds. The imposition of an economic, commercial and financial blockade had been the most permanent expression of an irrational policy of aggression that had included an entire panoply of political, diplomatic, military, paramilitary and terrorist measures. The manipulation of human rights for political ends and the slanderous campaign designed to conjure up a picture of human rights violations in Cuba was another reflection of that obsolete policy and constituted the main reason for the resolutions, scraping through the Commission over the past three years by narrow majorities resulting from the ferocious pressure exerted by the United States.

65. It was regrettable that the new inhabitants of the White House still maintained the old policy towards Cuba. Apparently the United States had not tired of that useless exercise in calumny, just as Cuba would not tire of rejecting and denouncing the selectivity, discrimination, partiality and injustice that the appointing of a special rapporteur implied.

66. His Government repeated yet again, and would continue to do so as long as necessary, that it would never accept the imposition of a special rapporteur, the fruit of an unjust procedure in which the political interests of one Power took precedence over a real preoccupation with human rights. His Government had demonstrated, as few others had done, its cooperation with all the mechanisms and procedures applicable to all States on a universal, non-selective, impartial and non-discriminatory basis, and would continue that cooperation in the future.

67. The report of the Special Rapporteur on the so-called situation of human rights in Cuba was once again guided by the same partiality, selectivity and absence of objectivity as the resolution that had established his mandate. There was no other explanation of the fact that, despite the communications received from organizations in Cuba and the rejection of the economic, commercial and financial blockade by the international community in General Assembly resolutions 48/16 and 47/19, not to mention the Special Rapporteur's own opinion in paragraph 75 of his report, he had deemed it neither necessary nor important to include in his eight recommendations any call upon the United States to put an end to a criminal blockade that had so affected the human rights of an entire people, including those of 2 million children.

68. It was difficult to interpret in any other way the fact that, in his "conclusions and recommendations", the Special Rapporteur had decided to include the pastoral letter of the bishops of Cuba, since it was "the product of real-life experiences and actual day-to-day contact with the realities of Cuban life" (para. 70), but not the numerous communications from members of Protestant churches, ecumenical movements, Christian institutions and Catholic lay people, the texts of which could be found in the office of the Secretary-General. Perhaps the Special Rapporteur thought that the pastoral letter should be included in his conclusions and recommendations because, although it had been made public, no one had been subjected to reprisals therefor, thus proving that freedom of expression existed.

69. The Special Rapporteur's impartiality might well be doubted by the reader of the accounts contained in paragraph 40 of the report; the Special Rapporteur had omitted the statements made and the evidence submitted by the Cuban Government to foreign journalists and the official reply which it had disseminated in the international mass media.

70. There was no reference either to the military base located in occupied Cuban territory, in flagrant violation of the sovereign rights of Cuba and of the principles of human rights. By emphasizing one category of human rights and not all human rights in their interrelationship, interdependency and indivisibility, the report had hardly shown itself to be impartial, fair and objective. Nowhere was it mentioned that, although the Cuban Revolution had had to face hostility and aggression since its inception, it had still guaranteed the human rights of its people. At no point was the State named that has been promoting a policy of outright hostility, in gross violations of the principles that should govern relations among States. It was strange that the Special Rapporteur had shied away from calling things by their proper names: for example, when he stated in paragraph 39 that he was against "people abroad" encouraging Cubans to leave by means that entailed enormous risk to life, he might just as easily have said "people in the United States".

71. Although admitting that he did not have sufficient information to form an opinion on the matter, the Special Rapporteur had nevertheless stated that the results of the elections of February 1993 had not been proof of support for the Government because the electorate had never been given a genuine choice (para. 73). Apparently the Special Rapporteur had not heard about the intense campaign, conducted day and night by 30 broadcasting stations in the United States, calling upon the people of Cuba to reject the Government and

the system by casting spoiled ballots. The Cuban people had thus had a clear choice, because they had the opportunity, in a secret ballot, to reject the system, the Government and the electoral process itself. Yet, despite that massive campaign, 95.6 per cent of the voters had cast their votes in favour, thus endorsing the system and the Government. That was irrefutable proof that the Cuban people, in its great majority, intended to maintain the independence, sovereignty and human dignity it had so hardly won.

72. In his conclusions and recommendations, the Special Rapporteur called upon the international community to encourage the establishment in Cuba of a market economy which, in the long run, would lead to the desired political changes. He wondered whether the Special Rapporteur was more concerned about human rights in Cuba or about its socio-economic and political system.

73. The Herculean efforts made by Cuba under such adverse conditions to preserve its victory and to promote its economy and development were well known, but the Cuban people had also to struggle every day against those who invoked freedom in an attempt to enslave it economically and politically. His Government was intensifying its commercial and financial relations so as to increase the flow of investment and financing needed to mobilize the Cuban economy. Nevertheless, in the search for forms that met the needs and aspirations of the Cuban people, the national spirit would take precedence; no one abroad had the right to decide in what way Cuba's political or economic system should be changed. Change was, indeed, necessary, and might yet make it possible to discuss, on an equal footing and without any preconditions, the existing differences between Cuba and the United States.

74. He would not waste the Commission's time on the supposed emigration or "parties and organizations" problems that had been given so much space in the report. His delegation had made available, at the back of the conference room, a secret document in which the United States Government acknowledged that there was no evidence to support the reports of alleged human rights violations and also recognized the true nature of the so-called champions of human rights in Cuba. It was unfortunate that the United States Government agreed with his own Government only in secret documents and not in its propaganda or in the public discussions in the Commission.

75. Mr. SHIDDO (Sudan) said that the Commission had discussed the situation of human rights in the Sudan for the first time at its forty-seventh session, under the confidential procedure established by Economic and Social Council resolution 1503 (XLVIII). In May 1992, it had appointed an Independent Expert for the Sudan, Mr. Bíró, to whom the Government of Sudan had extended its unreserved cooperation and assistance. At the initiative of certain countries whose relations with the Sudan were not good, the General Assembly had adopted resolution 47/142, pre-empting the Independent Expert's report, in which he had recommended that his mandate should be extended. That recommendation, although accepted by the Working Group on Situations, had been rejected by the United States Government. Consequently, in its resolution 1993/60, the Commission had decided that the situation of human rights in the Sudan should be examined under the public procedure and had requested its Chairman to appoint a special rapporteur for that purpose.

76. That sequence of events clearly demonstrated a consistent pattern of selectivity, partiality and manipulation of the United Nations human rights system for political and other purposes. Such a pattern also characterized the report of the Special Rapporteur, Mr. Bíró (E/CN.4/1994/48). The political agenda of the Special Rapporteur, and of the other enemies of Islam who were using him for their purposes, was to recommend in his report the abolition of the Islamic Shariah laws applicable in the Sudan, which reflected a vicious attack on the fundamental principles of Islamic penal legislation and on the Islamic faith in general, a matter which could not and would not be tolerated by the Government and the people of Sudan.

77. The Special Rapporteur had, furthermore, made a sacrilegious reference to the sources of Muslim revelation by stating (para. 61) that "it does not matter in this context who the drafter is nor what the sources of inspiration of these norms are". The Special Rapporteur's attempt to explain that the "drafter" referred to was the National Salvation Revolution Command Council, which had enacted the law, was futile. There was a difference between enacting a law and drafting norms. The Revolution Command Council and the Council of Ministers had enacted that law, but had not drafted it. It was well known that the hudud and the qisas had not been drafted by a human hand; they were derived from divine command.

78. The Special Rapporteur had betrayed his mandate. He had acted in a manner contrary to Article 1, paragraph 3, of the Charter of the United Nations, which encouraged "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" and to Article 2, paragraph 7, which prohibited the United Nations from intervening in matters which were essentially within the domestic jurisdiction of a State. He had also violated article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights, which guaranteed the right to the freedom and practice of religion.

79. The Special Rapporteur had failed to indicate how and why the penal law of Sudan was inconsistent with the International Covenants on Human Rights. His lack of knowledge of Islamic Shariah as a source of public international law, coupled with his eagerness to carry out the political agenda dictated to him, had led him to make irresponsible remarks about the two main sources of Islamic law, the hudud and the qisas, which had been chosen by the people and Government of the Sudan and which prevailed in his country.

80. The report was not the result of observations that the Special Rapporteur had made during his short visits to the Sudan; he had, in fact, relied on information fed to him from outside the Sudan by elements of the corrupt, desperate and self-exiled Sudanese opposition and by other parties interested in putting pressure on the country. According to his mandate, the Special Rapporteur had to "investigate" allegations by seeking "credible and reliable information". Nevertheless, he had occupied himself exclusively with allegations which, according to his own report, "seemed" to be well-founded, from which it could only be concluded that either intentionally, or from lack of experience and professionalism, he had failed to fulfil his mandate. He

had not even bothered to include in his report any reference to the criteria by which he had measured the credibility or reliability of the information received.

81. In a letter dated 24 February 1994, the Special Rapporteur had tried to defend his position by stating that he had limited his criteria to those standards of international human rights law to which the Sudan had voluntarily consented, and that his remarks should be interpreted on a purely legal basis. He had not clarified, however, how Islamic norms were in contradiction with international instruments.

82. In his report as an Independent Expert, Mr. Bíró had not referred to specific hudud or qisa offences as Islamic doctrines, nor had he attacked that doctrine as he had done in his report as Special Rapporteur. He had also admitted, in his earlier report, that it had been beyond his mandate to take a position on arguments put forward by Government officials concerning definition of penalties or their mode of execution, as that was an internal matter of the State concerned. In that report, Mr. Bíró had used moderate and inoffensive language. In his interim report to the General Assembly (A/48/601, paras. 27-31), he had referred to Government obligations under international law, but without touching on Islamic laws or recommending their abolition.

83. In his report to the Commission as Special Rapporteur (E/CN.4/1994/48), however, Mr. Bíró had violated international standards. He had used abusive and offensive language, had made specific reference to hudud and qisa offences, and had made insolent references to the source of inspiration of those norms. That had been the principal cause of the angry reaction of the people and the Government of Sudan and of Muslims worldwide.

84. It was not enough for the Special Rapporteur to refer to general observations made in the past or to assert that he had respected religious beliefs. An apology and retraction of the paragraphs in question was needed. Maintaining them was tantamount to insulting religious values and, since the Special Rapporteur had refused to delete the paragraphs in question, the logical inference was that he meant to insult a major religion.

85. The specific allegations made in the report were unfounded. Frequent references had been made to so-called ghost houses where detainees were allegedly tortured. His Government had always denied the existence of such houses. The Special Rapporteur had not even requested permission from the authorities to visit one of those houses, whose location he allegedly knew. Instead, he had chosen to report allegations without taking the opportunity to verify them.

86. In paragraph 50 of the report, the Special Rapporteur had portrayed the Popular Defence Forces guarding the supply trains as being on a looting, raping and killing foray. In fact, those forces had had to walk on either side of supply trains for almost 50 kilometres; they could have had no other motive than to protect the trains from the attack of the rebel forces.

87. The Special Rapporteur had requested information about alleged arrests, disappearances and summary executions. The Government had investigated the

cases in question and had conveyed the results of its investigations to the Special Rapporteur. Some of the persons in question were free, some of them had never existed, and some were being investigated or had been convicted in a fair trial and were in prison. The Special Rapporteur had failed clearly to reflect that information in his report.

88. The Special Rapporteur had drawn conclusions relating to executions and arbitrary killings of thousands of civilians, without providing any evidence. That demonstrated carelessness and lack of responsibility. His Government could certainly not be expected to answer such sweeping statements or to accept such unsubstantiated conclusions.

89. The Special Rapporteur had failed in many cases to report on progress in the Sudan, as required by his mandate. Among the positive aspects he had neglected were the Government's efforts to provide care to children; its efforts in the field of humanitarian assistance, culminating in a series of bilateral and multilateral agreements; the lifting of the night curfew in Khartoum; the amending of the National Security Act to provide more guarantees, including a detainee's right to file a complaint concerning any violation of his right not to be subjected to physical harm or cruel treatment; the incorporation of provisions in the Penal Code of 1991 making punishable all acts of torture or ill-treatment of detainees; and the progress made in improving prison living conditions and the treatment of prisoners.

90. In spite of his bias, the Special Rapporteur had been obliged to include in his report some favourable aspects of the human rights situation in Sudan. Other official foreign visitors to Sudan, including the Minister for Development Cooperation of the Netherlands, and the representative of UNICEF, had provided much more objective reports than the Special Rapporteur: all had spoken in favourable terms about his country.

91. In evaluating the situation of human rights in Sudan, the Commission must take into consideration the clarifications his Government had provided in the past, the difficulties posed by the civil war it had inherited, and the fact that it had cooperated fully with the Commission and had confirmed its commitment to respect and observe its obligations under the various human rights instruments.

92. He suggested, therefore, that the Commission should delete and disregard paragraphs 59, 60, 61 and 133 (a) of the report (E/CN.4/1994/48); set up an ad hoc expert group to consider whether the United Nations or any of its bodies or agents had the right to recommend the abolition of national legislation based on religious commands; refuse to consider the remainder of the Special Rapporteur's report; and take cognizance of the fact that human rights violations in the Sudan were not part of a systematic policy of the Government, but rather a product of the armed conflict in the country, to which the international community should attempt to find a peaceful solution.

93. He requested that the Commission should discontinue its consideration of the human rights situation in the Sudan. Otherwise, it must be concluded that the United Nations human rights system was hypocritical, biased and used double standards. In that connection, he wished to pay tribute to the martyrs of Hebron and the Lebanon and wondered why the criminal acts of Israel were

being ignored by the Commission. If the Commission decided to continue its consideration of the situation in his country, his Government would no longer cooperate with the Special Rapporteur or receive him in its territory because of the contempt he had demonstrated for Islam, his lack of professionalism, credibility and objectivity.

94. The CHAIRMAN reminded participants that the Commission had adopted time-limits for the various types of statement. The details could be found in paragraph 46 of the appropriate summary record (E/CN.4/1994/SR.2) and he appealed to all speakers to respect them.

The meeting rose at 1 p.m.